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Plaintiff.

75.

Defendants.

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WHEREFORE by reason of the law and the findings as aforesaid it is ORDERED, ADJUDGED and DECREED that plaintiff is entitled to the right and use of all the waters of Gibbs Springs and waters of Hollow Spring and that the defendants, ^{their agents & servants} he and they are hereby forever perpetually restrained and enjoined from in any way interfering with or molesting or in any manner using the waters of Gibbs Spring and water of Hollow Spring situated on or near Sections 21 and 22 in Township 16 South Range 35 East Boise Meridian, in Oneida County, Idaho.

3.

And it is further ORDERED that each of the respective parties hereto pay their own respective costs herein incurred.

Dated this 5 day of March, 1913.

Alfred Paulsen

District Judge.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF CHELSEA.

North and Middle Canyon Irrigation
and Live Stock Company, a corporation,

Plaintiff,

vs.

A. J. Nielson and John W. Smith,

Defendants.

FINDINGS OF FACT AND

CONCLUSIONS OF LAW.

FINDINGS OF FACT.

This case came on regularly for trial before the Court at the November term 1912, J. D. Jones, Esq. and D. C. McDougall, Esq. appearing as attorneys for the plaintiff and H. D. Davis Esq., and Messrs Stewart & Stewart appearing as attorneys for the defendant; the court having heard the evidence of the witnesses and the arguments of the respective counsel and taken the same under advisement and duly considered the same comes now and files his Findings and Conclusions as follows:

FINDINGS OF FACT.

THE COURT FINDS:

1. That the plaintiff is and since April 6th, 1907 has been a corporation organized under the laws of the State of Utah and duly qualified to do business in the State of Idaho, for the purpose of owning the right to and distributing the waters of North Canyon Creek to its stockholders who are the owners of land under the ditches of said Company and users of the water of said stream.
2. That the predecessors and grantors of the plaintiff corporation in the year 1871 constructed ditches and diverted all the waters of said North Canyon Creek and its tributaries to and upon their land and ever since said date continuously used the same for domestic, culinary and irrigation purposes upon their said land until the organization of this plaintiff corporation when the rights of the said predecessors were conveyed by deed to the

2.

plaintiff corporation and since said date the said plaintiff corporation has controlled and used and distributed the water of said stream and its tributaries to its stockholders who are the owners of the said land lying under the ditches of the plaintiff situated in Oneida County, Idaho and Box Elder County, Utah where the same has been continuously used for a beneficial purpose and that all of said waters when economically used is not sufficient for the proper irrigation of all the lands of the stockholders of the plaintiff corporation lying under the said ditch system and susceptible of irrigation therefrom.

3. That the Gibbs and Water Hollow Springs are situated on or near sections 21 and 22 in Township 16 South Range 35 East Boise Meridian in Oneida County, Idaho, and are in the same canyon or ~~hollow~~ hollow through which North Canyon stream flows and that the natural flow of the water from said springs is in the direction of and to North Canyon Creek and there is leading from said springs to the North Canyon Creek natural channels through which the water from said springs, when uninterrupted, flows and mingles with the North Canyon Creek; that plaintiff, its predecessors and grantors in the year 1871 and at numerous and divers times since said date cleaned out said springs and cleaned the channel and enlarged the same so as to permit the waters from said spring to flow uninterrupted to the North Canyon Creek and the waters from said springs have each and every year since said time to the filing of this complaint flowed down and mingled with the waters of North Canyon Creek, except in the latter part of the irrigating season in unusually dry years, and that said springs are tributaries of the North Canyon Creek.

4. That the defendants claim to own said springs by reason of purchase through mesne conveyance from J.W. Gibbs and by adverse use, but the court finds that J.W. Gibbs did not acquire the use of said water either by appropriation or adverse use and that the defendants have acquired no right to the use of the waters of said springs or any part thereof.

5.

5. That in September, 1910, the defendants without the consent of the plaintiff and against their protest and objection entered on said Gibbs and Water Hollow Springs and diverted the same from their natural channel and prevented the waters thereof from flowing down the natural channel into North Canyon Creek and thereby deprived the plaintiff of the use of said water.

From the foregoing facts the court makes the following

CONCLUSION OF LAW.

1 That the plaintiff is the owner and entitled to the use of all the water flowing from North Canyon Creek and its tributaries.

2. That Gibbs Springs and Water Hollow Springs are tributaries of North Canyon Creek.

3. That defendants have no right to the use of water of the Gibbs or Water Hollow Springs.

4. That the plaintiffs are entitled to an injunction against the defendants perpetually restraining them or either of them from interfering with or using the waters of said springs.

Edmund Budge
District Judge.

015-7257

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT STATE OF IDAHO COUNTY OF ONEIDA

North and Middle Canyon Irrigation
and Live Stock Company, a corporation,

Plaintiff

vs

***** D E C R E E.

A. J. Nielson and John W. Smith,

Defendants

This cause came on regularly for trial on the 14th day of November 1912 at the regular November term of said Court T. D. Jones Esq., and D. C. McDougall Esq., appearing as counsel for plaintiff and S. D. Davis Esq., and Messrs Stewart & Stewart appearing as counsel for the defendant whereupon witnesses upon the part of the plaintiff were duly sworn and examined and documentary evidence introduced by the respective parties and evidence being closed after argument of counsel and submitting of proofs by the respective parties hereto the cause was submitted to the court for consideration and decision; and after deliberation thereon the court files its memorandum of decision and its Findings of Fact and Conclusions of law in writing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore by reason of the law and the Findings as aforesaid it is ORDERED ADJUDGED AND DECREED that plaintiff is entitled to the right and use of all the waters of Gibbs Springs and waters of Water Hollow Spring and that the defendants their agents and servants

the cause was submitted to the court for consideration and decision; and after deliberation thereon the court files its memorandum of decision and its Findings of Fact and Conclusions of law in writing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore by reason of the law and the Findings as aforesaid it is ORDERED ADJUDGED AND DECREED that plaintiff is entitled to the right and use of all the waters of Gibbs Springs and waters of Water Hollow Spring and that the defendants their agents and servants be and they are hereby forever perpetually restrained and enjoined from in any way interfering with or molesting or in any manner using the waters of Gibbs Spring and water of Water Hollow Spring situated on or near Sections 21 and 22 in Township 16 South Range 35 East Boise Meridian in Oneida County, Idaho

And it is further ordered that each of the respective parties hereto pay their own respective costs herein incurred.

Dated this 5th day of March, 1913.

Alfred Budge,

District Judge

Recorded this 6th day of March 1913.

John J. Evans,

Clerk

By *Jessie Jones*

Deputy

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

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August 4, 1993

RECEIVED

AUG 05 1993

Department of Water Resources
Eastern District Office

Mr. Harold Jones
Water Right Supervisor
Idaho Department of Water Resources
200 N. Skyline Drive
Idaho Falls, Idaho 83402

RE: North and Middle Canyon Irrigation & Live Stock Company

Dear Mr. Jones:

North and Middle Canyon Irrigation & Live Stock Company, whose address is in care of Lauren John, President, Portage, Utah, has consulted with me with respect to their water rights. Apparently their recent inquiries through IDWR offices in Idaho Falls as well as Boise did not reflect any record of their water rights on file.

I have obtained information from the company and from the Oneida County Recorder's Office concerning their water rights and am writing to provide this information to IDWR and request that they be properly filed and placed of record in accordance with your usual practice.

North and Middle Canyon Irrigation & Live Stock Company is a Utah corporation originally incorporated April 6, 1906. It was also qualified at that time to conduct business in Idaho and has continuously remained qualified and in good standing under Idaho law as a non-profit corporation.

The company has decreed water rights consisting of all of the water in Gibbs Spring and Water Hollow Spring which is tributary to North Canyon Creek. In times of extremely high spring runoff, North Canyon Creek also is tributary to the Malad River in the vicinity of the Utah-Idaho border.

I am enclosing copies of the Findings of Fact and Conclusions of Law and Decree entered March 5, 1913 by District Judge Alfred Budge in the District Court of the Fifth Judicial District of the State of Idaho, County of Oneida. The Decree was

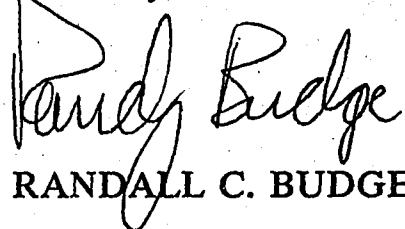
Harold Jones
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August 4, 1993

recorded in the Oneida County Recorder's Office on March 6, 1913. The Findings of Fact reflect a priority date of 1871 established by the company's predecessors in interest. The Gibb and Water Hollow Springs arise "on or near Sections 21 and 22 in Township 16 South, Range 35 East, Boise Meridian, in Oneida County.

The company acquired these water rights and have continuously diverted and applied the same to beneficial use in the same manner since April 6, 1907. Company officers advise that the water has been continuously used in the same fashion for irrigation purposes to raise hay and grain. There are currently six water users who irrigate approximately 1000 acres which are located both in Idaho and Utah along the border. All land is flood irrigated. I do not have available legal descriptions of the exact place of use, which are not reflected in the Decree or Findings. The Decree does not reflect the quantity of water. However, I am informed that the ASCS designed and funded the installation of a gravity-flow pipeline installed in approximately 1970-71, which transports the water a distance of approximately 2-1/2 miles. The pipe is 14 to 16 inches in diameter.

I trust the foregoing information and the enclosures are sufficient to enable this right to be properly filed and reflected in IDWR records. If you have any questions or additional information is needed, please feel free to contact me.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Lauren John, President
Doug Gibbs, Secretary